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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1948

No.

WILLIAM H. RILEY, N. H. LABOR COMMISSIONER AND ERNEST R. D'AMOURS, N. H. ATTORNEY-GENERAL, *Petitioners,*

v.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL UNION NO. 633, AN AFFILIATION OF THE AMERICAN FEDERATION OF LABOR, BASIL D. FRENCH, STEWART DUDLEY, ROLAND JUTRAS AND CHARLES A. SMITH, *Respondents.*

PETITION FOR WRIT OF CERTIORARI

May It Please the Court:

The petitioners, the Attorney General and Labor Commissioner for the State of New Hampshire, respectfully petition this Honorable Court for a writ of certiorari to the Supreme Court of New Hampshire.

In order to avoid useless repetition and extended argument and for convenience as well as for economy, the supporting brief is not presented separately, but is incorporated in this petition in connection with the statements on jurisdiction, question presented and reasons relied on for allowance of the writ.

Statement of the matter Involved

There is no dispute as to the facts of this case. Only one issue is presented to this Court: the interpretation of Section 14(b) of the Taft-Hartley Act and its application to the facts of this case.

This is an action at law brought in the Superior Court, Hillsborough County, New Hampshire, at the September Term 1947, by the International Brotherhood of Teamsters, etc., respondents herein, against William H. Riley, Commissioner of Labor, Ernest R. D'Amours, Attorney General, petitioners herein, and Joseph Faltin, proprietor of the J. E. Faltin Transportation Co., a business admittedly engaged in interstate commerce. Respondents (petitioners below) who had previously entered into a contract containing union security provisions with the J. E. Faltin Transportation Co. prayed for a declaratory judgment that this contract was not unlawful even though not allowed to run for more than six months after the adoption of the Willey Act and that they were not liable to prosecution under chapter 195, New Hampshire Laws 1947 (the Willey Act, so-called) for a failure to renegotiate their contract with Faltin. Their request for the declaratory judgment was prompted by the fact they had been informed by the Commissioner of Labor and the Attorney General that the provisions of the Willey Act would apply to this and similar contracts on December 14, 1947, six months after the passage of the Willey Act, even though by its terms this contract was to expire only about a year later on December 31, 1948 and that for failure to comply with the voting procedure required by the Willey Act in connection with union shop provisions, they would be liable to the penalties imposed by section 22 of chapter 212 of the Revised Laws. Moreover, they understood that in default of such compliance every employee covered by this contract would be free to secure and continue in his employment whether or not a member of any labor organization.

For a clear understanding of the matter involved it is necessary to outline in chronological order the three events which gave birth to this litigation: the contract in suit, the Willey Act of New Hampshire, and the Taft-Hartley Act.

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The contract in suit between respondent union and said Faltin was entered into on February 8, 1947, to be effective from January 1, 1947 to December 31, 1948, i.e. for two full years. The only parts of the contract, beside its effective dates, material to this case are the union security provisions which for the purposes of this case amount to a closed shop agreement. When made the contract was valid under state and federal laws.

The Willey Act of New Hampshire became effective on June 14, 1947. Entitled, "An Act to Protect Freedom of Employment," it prohibits "union shop" and "closed shop" provisions in labor contracts, unless certain regulations (pertaining to voting, etc.) in sections 21-a and 21-b are met. It is therefore in the nature of a "regulatory-prohibitory" act. By section 21-c existing contracts are allowed to run for six months. Under the Willey Act, therefore, after six months (i.e. December 14, 1947) the contract in suit, not having complied with its regulatory provisions, would be invalid and the respondents subject to certain penalties enumerated in chapter 212 of the Revised Laws of New Hampshire (1942).

The Taft-Hartley Act, however, became effective on August 23, 1947, and under section 102 of the act pre-existing contracts are to remain in effect until their expiration. It is respondents' contention that the contract in suit (involving as it does interstate commerce) falls fairly into the federal field and under the Taft-Hartley Act remains in effect until its expiration on December 31, 1948. Petitioners on the other hand, looking to section 14(b) of the Taft-Hartley Act, contend that Congress has delegated to the states the power to prohibit, and as a necessary concomitant, to regulate union security provisions, and that thus under the Willey Act the contract in suit expired on December 14, 1947, with the heretofore mentioned consequences.

The case was transferred by the Superior Court to the Supreme Court of New Hampshire without any ruling material to its merits. The Supreme Court of New Hampshire held (Blandin, J. dissenting):

"It is, therefore, our conclusion that there is nothing in Section 14(b) of the Taft-Hartley Act which abrogates the rule that 'Congress, having entered this field of regulation, it follows from the paramount character of its authority that state regulation of the subject matter is excluded.' *Texas & Pacific Railway Co.* v. *Rigsby, supra,* and we accordingly hold that the regulatory provisions of the Willey Act are superseded by the Taft-Hartley law as to the contracting parties and the individual plaintiffs herein."

This Court Has Jurisdiction

Under Sec. 237(b) of Judicial Code (28 U.S.C.A. 344) this court clearly has jurisdiction of this case. "It shall be competent for the Supreme Court, by certiorari, to require that there shall be certified to it for review and determination . . . any cause wherein a final judgment or decree has been rendered or passed by the highest court of a state in which a decision could be had where is drawn in question the validity . . . of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States . . . and the power to review under this paragraph may be exercised as well where the federal claim is sustained as where it is denied." (ibid) In this case the highest court of New Hampshire held that a state statute (the Willey Act) was repugnant to a law of the United States (the Taft-Hartley Act). The judgment was final and a motion for rehearing addressed wholly to the court's interpretation of the United States law was denied. Finally, a motion for a stay of the Court's order invalidating the Willey Act was also denied. All state remedies have been exhausted.

The federal question was raised and argued by brief and orally before the Supreme Court of New Hampshire where the case was finally determined. The question presented pervades the entire case and dominates it entirely. Under the Willey Act, the employees covered by the contract enjoyed freedom of employment after December 14, 1947 and respondents as well as the employer are admittedly liable to penalties for continuing

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after that date to agree to make membership or nonmembership in a labor union a condition of employment. In its decision the Supreme Court of New Hampshire held that the Willey Act was repugnant to the Taft-Hartley Act even though the latter purports to confer wide power upon the states to deal with union security contractual provisions in labor agreements involving interstate commerce.

The Question Presented

The precise federal question of substance presented in this case may be thus stated:

> Does section 14(b) of the Taft-Hartley Act purport to limit the State of New Hampshire to only the enactment of prohibitory legislation as applied to commerce on union security as a condition of employment or did Congress intend by section 14(b) to recognize and give precedence not only to flat prohibitory state laws but also to such regulatory state laws which impose more stringent conditions and limitations than the Taft-Hartley Act itself on union security as a condition of employment?

The Supreme Court of New Hampshire held that section 14(b) was a grant of authority to prohibit, that, nothing more and nothing less.

Your petitioners contend that this construction is erroneous and contrary to the meaning which has been adopted by those who wrote on the subject in the various law reviews since the passage of the Taft-Hartley Act. For example, *Livengood, Jr.* in 26 N.C. L. Rev. (Dec. 1947) wrote, "In the second place, the act expressly recognizes and gives precedence to state laws dealing with union security insofar as such laws impose ***more stringent limitations*** than the act itself, which appears to be frequently the case . . . " (Italics ours.) *Perkins,* in 27 B. U. L. Rev. (Nov. 1947) says: "The applicability of the state act to enterprises subject to the federal law is extended by s. 9, and in this connection it should be noted that the N.L.R.A. as amended in

s. 14(b) authorizes the application of *more restrictive state provisions.*" (Italics ours.) *Smith*, in 46 Mich. L. Rev. 593, 599 speaks of the authority given the states to impose "*conditions more restrictive* than those provided by the amended N.L.R.A." (Italics ours.)

Reasons Relied Upon for Allowance of Writ

A recent survey made at our request by U.S. Law Week indicated that no decision on this point was rendered by any court, federal or state, other than by the Supreme Court of New Hampshire.

It is respectfully submitted that there are special and important reasons for the allowance of this writ. It seems plain that in this case the Supreme Court of New Hampshire has decided a federal question of substance which has not heretofore been determined by the United States Supreme Court. Moreover, the state supreme court has decided it under a doctrine which is probably not in accord with the applicable decisions of the United States Supreme Court.

The state supreme court decision appears to be based on the proposition that congressional regulation of commerce necessarily excludes state regulation. That is a *non sequitur*. The current constitutional doctrine regarding the power of the states to regulate interstate commerce does not appear so absolute. There are many situations in which the states have been allowed to tax and regulate interstate commerce in spite of federal taxation or regulation of the same subject matter. To determine the powers of the several states, the test is not whether the *Constitution* gives Congress jurisdiction over interstate commerce, (*Gibbons* v. *Ogden*, 9 Wheat. 1 (1824), nor whether Congress *expressed its will* regarding some aspects of the subject matter, (*License cases*, 5 How. 504 (1847), nor again whether the subject matter of the legislation demands a *uniform national treatment*, (*Cooley* v. *Philadelphia*, 12 *How.* 299 (1851), but, *rather, whether* an examination of the record and all pertinent facts disclose any discrimination or *obstacle to the free flow of commerce.* (*Wood-*

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ruff v. *Parhan*, 8 Wall, 123 (1869). The cited cases appear to be the landmarks in the evolution of the constitutional doctrine obtaining today that only such state legislation as is found to *obstruct in fact* the free flow of commerce will be declared invalid.

Finally, the question presented is one of peculiar gravity and vitally affects the public interest. Yet, much confusion is at large with respect to the meaning of section 14(b) of the Taft-Hartley Act. A cursory examination of the decisions in this matter by the Supreme Courts of Arizona, Nebraska and North Carolina will point up the diversity of impressions and attitudes produced by section 14(b). The implications of the recent decision by the NLRB in the case of *Giant Food Shopping Center, Inc.*, 22 Lab. Rel. Rep. (Lab. Rel. Ref. Man.) 1070 NLRB 1948) are that Congress has left with the states a residue of power to deal with union security as a condition of employment. Since the NLRB has held that it is precluded from holding union shop elections in those states which unconditionally prohibit the union shop and since the NLRB policy in other states, such as New Hampshire, is to accept the requirements of the state regulatory acts as binding in the NLRB union shop elections, it follows that the NLRB is apparently of the opinion that the administration of both acts is feasible without leading to administrative conflicts. Now comes New Hampshire to make the confusion more confused by holding state regulation invalid with an intriguing silence on whether prohibition standing alone would be any better. In Arizona, Nebraska and North Carolina labor complained that the prohibitory legislation went too far. In New Hampshire, labor argued that the legislation did not go far enough to qualify under section 14(b).

Until a final and authoritative decision upon the meaning of section 14(b) is rendered by the United States Supreme Court, the labor legislation of New Hampshire, as well as of some dozen other states in this important area of union security provisions, is literally at a standstill, with employers, employees, state officials and union leaders in a quandary. The congressional debates do not provide the answer with any certainty.

In brief, the question appears one of real substance and a decision by this court is essential in the light of the fact that the decision will chart the course of the forty-eight states and of the federal government as well. It is submitted that it is peculiarly within the special competence of this court to exercise its jurisdiction when a question so vitally affecting the balance of power between the state and national government is presented with respect to one of the main pillars of our social structure—economic security of not only labor but also of management itself.

Your petitioners present to this court, and file herewith as an exhibit hereto, a duly certified transcript of the entire record in this case as the same appears in the Supreme Court of New Hampshire.

Wherefore, your petitioners pray that a writ of certiorari issue under the seal of this court, directed to the Supreme Court of New Hampshire, commanding said court to certify and send to this court a full and complete transcript of the record and of the proceedings of the said Supreme Court of New Hampshire had in the case numbered and entitled on its docket, No. 3729, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local Union No. 633, an Affiliation of the American Federation of Labor, Basil D. French, Stewart Dudley, Roland Jutras and Charles A. Smith, Respondents. v. William H. Riley, Ernest R. D'Amours, and Joseph E. Faltin, Proprietor of J. E. Faltin Motor Transportation Co., Petitioners, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein of said Supreme Court of New Hampshire be reversed by the court, and for such further relief as to this court may seem proper.

William H. Riley,
Ernest R. D'Amours
by Ernest R. D'Amours,
Attorney General of N. H.
Counsel for the Petitioners

Dated August 27, 1948.

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI

I. STATUTES OF NEW HAMPSHIRE

The statute of New Hampshire involved in the foregoing petition is Chapter 212 of the Revised Laws of New Hampshire (1942) entitled "Laborers", of which section 1 through 13 deal with Hours of Labor, sections 14 through 20 with Payment of Wages, sections 21 through 34 with Provisions Relating to Labor Contracts, sections 35 through 39 with Days of Rest, etc., and section 40 and 41 with the Labor Commissioner.

This Statute was amended by Chapter 195, Laws of 1947, entitled "An Act to Protect Freedom in Employment" (Willey Act) by striking out the text of the original section 21 and substituting therefore the following:

> "21. *Freedom in Employment.* Every person has the right to secure and continue in any employment without discrimination against him by reason of his membership or non-membership in any labor organization or his payment or non-payment of money to any labor organization. No person, firm or corporation shall interfere with the exercise of the said right. No person, firm or corporation shall make, or agree to make membership or non-membership in a labor organization or payment or non-payment of money to a labor organization a condition of employing or continuing the employment of any person. No person, firm or corporation shall attempt to induce any person, firm, or corporation to violate any of the preceding provisions of this section. Any act or agreement, written or oral, in violation of the foregoing provisions of this section shall be unlawful. Any person, firm or corporation violating or procuring any person to violate any provision of this section shall be liable for all damages occasioned to any person thereby. The superior court shall have jurisdiction to issue injunctions, including mandatory injunctions to prevent violations of this section, and to protect and preserve the right stated herein. All hearings upon court orders granting or denying an injunction in such matters shall be given precedence in the superior and supreme courts over other matters pending to the end that an expeditious adjudication of the issues may be reached.

21-a *Exception.* Section 21 shall not apply to contracts negotiated between any person, firm or corporation who regularly employs more than five employees and a labor organization nor to acts done in accordance with such contracts provided the following conditions have been satisfied:

I. Any person, firm or corporation shall not be prohibited from entering into any contract prohibited by section 21 with a labor organization representing his or its employees, where at least two-thirds of such employees voting (provided such two-thirds of the employees constitute at least a majority of the employees to be covered by such contract) shall have voted affirmatively by secret ballot in favor of such contract in an election conducted under the supervision of the labor commissioner or his representative and in accordance with such rules and regulations as he may prescribe. Such authorization of such a contract shall be deemed to continue thereafter, subject to the right of either party to such contract, not more frequently than at intervals of two years, to request the labor commissioner in writing to conduct a new election upon the subject. Upon receipt of such request by either party to the contract, the labor commissioner shall determine whether there is reasonable ground to believe that there exists a change in the attitude of the employees concerned toward such contract since the prior election, and upon so finding the commissioner shall conduct a new election. If the continuance of such contract is supported on any such election by a vote at least equal to that hereinabove provided for its initial authorization, it may be continued in force and affect thereafter, subject to the right to request a further vote by the procedure hereinabove set forth. If the continuance of such contract is not thus supported on any such election, it shall be deemed terminated at the termination of the contract of which it is then a part or at the end of one year from the date of the election, whichever proves to be the earlier date.

II. Whenever any labor organization desires to negotiate or renew any contract prohibited by section 21, it shall within thirty days prior to the commencement of its negotiations therefor, satisfy the labor commissioner that its initiation or other entrance fees and its dues are not unduly burdensome on present or prospective employees. Initiation or other entrance fees exceeding the total amount of twenty-five dollars per person shall be deemed unduly burdensome within the meaning hereof. Upon being satisfied

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that the labor organization has complied with the conditions of this paragraph, the labor commissioner shall certify such fact to the employing person, firm or corporation.

III. Such contract shall contain a clause, which shall be as binding on the labor organization as if in its by-laws, providing that such labor organization shall impose no discriminatory qualifications for membership in such organization based on race, color, religious creed, sex, age, national origin, ancestry or numerical restriction of total membership, unless based upon a bona fide occupational qualification; and a further clause, which shall also be as binding on the labor organization as if in its by-laws, providing that such labor organization shall grant to all members equal voting rights in such organization.

IV. Such contract shall contain a clause, which shall be as binding on the labor organization as if in its by-laws, providing that no member of such labor organization shall be suspended or expelled from membership therein under the by-laws thereof except for just cause, and then only after such member has been afforded a right of appeal from such suspension or expulsion through regular labor organization channels and a further right of appeal within fifteen days after final labor organization action to the labor commissioner, who may order reinstatement of such member in the organization if he finds, after hearing, that such member was suspended or expelled without just cause. Such member may continue at his employment during the pendency of his appeal and until final determination thereof. If the labor organization declines to comply with an order of reinstatement made by the labor commissioner hereunder, then in such case the employee may continue at his employment notwithstanding any provisions in such contract, or contracts in succession thereto, requiring membership in such labor organization as conditions of employment.

21-b. *Reports.* Any local labor organization which becomes party to a contract prohibited in section 21, by meeting the conditions prescribed in section 21-a, shall file forthwith with the labor commissioner and annually thereafter within thirty days after the close of its fiscal year, during the period of such contract or any renewal thereof, a financial statement sworn to by its treasurer sufficiently itemized to show the following: name of organization; location of office; name, title, home address and salary of each

officer; initiation fees and dues; total annual receipts from initiation fees, dues, assessments, fines and other sources; total expenditures for salaries of officers, general office administration, other expenditures, including contributions or gifts in excess of one hundred dollars with the name and address of each recipient; statement of all financial transactions between the labor organization and its parent organization or any local or state federation of labor organizations with which it is affiliated; and a statement of total number of members belonging to such organization as of date of report. There shall be submitted accompanying the first financial statement a copy of the by-laws of such organization and all other rules and regulations affecting membership, and thereafter all changes in the same shall be filed forthwith with the labor commissioner, during the pendency of any such contract or renewal thereof.

21-c *Existing Contracts.* The provisions of section 21 shall not apply to existing contracts until the expiration thereof or until six months after the effective date of this act, whichever shall be sooner.

21-d. *Constitutionality.* If any provision of this act or the application of such provision to any person or circumstances shall be held invalid, the remainder of this act or the application of such provisions to persons or circumstances other than those as to which it is held invalid shall not be affected thereby."

The penal provision of Chapter 212 of the Revised Laws Of New Hampshire (1942) relating to the preceding section is as follows:

"22. PENALTY. Whoever violates any provision of the preceding section shall be fined not less than two hundred nor more than one thousand dollars, or imprisoned not more than nine months, or both."

II. FEDERAL STATUTE

The federal statute applicable to the foregoing petition is section 14(b) of the Labor Management Act of 1947, which reads as follows:

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"SEC. 14.

(b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law."

No. 283. RILEY, LABOR COMMISSIONER, ET AL. *v.* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL UNION No. 633, ET AL. On petition for writ of certiorari to the Supreme Court of New Hampshire. *Per Curiam:* The petition for writ of certiorari is granted. It appearing that the cause has become moot, the judgment of the Supreme Court of New Hampshire is vacated without costs and the cause is remanded for such proceedings as by that Court may be deemed appropriate. *Ernest R. D'Amours*, Attorney General of New Hampshire, for petitioners. *H. Thornton Lorimer* for respondents. Reported below: 95 N. H. 162, 59 A. 2d 476.

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Certiorari Granted. (*See also No. 474, ante, p. 368, and No. 283, supra.*)